

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JAMES L. MCPHADEN,

Defendant - Appellant.

NO. C05-5517JET  
CR95-5828JET

ORDER

THIS MATTER comes on before the above-entitled Court upon remand from the Ninth Circuit Court of Appeals.

The Ninth Circuit Court of Appeals has directed the district court to issue or decline to issue a certificate of appealability in C05-5517JET.

1 Having considered the entirety of the record and files herein, it is hereby  
2 ORDERED that the court declines to issue a Certificate of Appealability because Defendant  
3 McPhaden has failed to make “a substantial showing of the denial of a constitutional right.” 28  
4 U.S.C. §2253(c)(2).

5 IT IS SO ORDERED.

6 The clerk of the court is instructed to send uncertified copies of this Order to all counsel of  
7 record.

8 DATED this 28<sup>th</sup> day of September, 2005.

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10 /s JACK E. TANNER

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JACK E. TANNER  
12 SR. UNITED STATES DISTRICT JUDGE  
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